IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Jail Appeal No.1294/2004

1. Abdul Salam S/o Afzal Sheikh
2. Mateen Tejamul S/o Saleemuddin
3. Tajmul S/o Abedeen
4. Mohd. Sanaul S/o Atabuddin
5. Muzzam Sheikh @ Uzzat Sheikh
   S/o Zinnat Sheikh

Versus

State of Rajasthan through PP

Date of Judgment :::: 9th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Vinaypal Yadav, Counsel for accused-appellants Mateen Tejamul, Mohmd. Sanaul & Muzzam Sheikh
Miss. Rajesh Kandwal, Amicus Curiae, for appellants
Smt. Nirmala Sharma, P.P., for the State

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By the Court:-

Five accused-appellants, namely, (1) Abdul Salam S/o Afzal Sheikh, (2) Mateen Tejamul S/o Saleemuddin, (3) Tajmul S/o Abedeen, (4) Mohd. Sanaul S/o Atabuddin and (5) Muzzam Sheikh @ Uzzal Sheikh S/o Zinnat Sheikh have preferred this appeal through the Superintendent, Central Jail, Alwar, against the judgment and order dated 16.10.2004 passed by the learned Additional District & Sessions Judge (Fast Track No.1), Ajmer, in Sessions Case No.204/2001, whereby they have been convicted and sentenced under Sections 395 and 397, IPC, to undergo 10 years rigorous imprisonment and a fine ofRs.1,000/-; in

default of payment of fine, to further undergo one month's additional simple imprisonment.

Miss. Rajesh Kandwal, Advocate, was appointed as Amicus Curiae, to argue the case on behalf of the appellants. During the pendency of the appeal, Shri Vinaypal Yadav, Advocate, also filed 'Vakalatnama' on behalf of the appellants - Mateen Tejamul, Mohmd. Sanaul & Muzzam Sheikh.

The learned counsel for the accused-appellants as well as the Amicus Curiae appearing on their behalf, both, argued the appeal on merits, but, during the course of arguments, in view of the overwhelming evidence in the matter against the appellants, they did not challenge the order of conviction passed by the trial court against the appellants, and their only contention is that the appellants have already remained in jail for about six years, therefore, sentence of imprisonment passed by the trial court be reduced to a period of imprisonment already undergone by them.

The learned Public Prosecutor has supported the judgment of the trial court and contended that there is no merit in this appeal and the same be dismissed.

I have considered the submissions of the learned counsel for the parties and examined the impugned judgment as well as the record of the trial

court.

The order of conviction passed by the trial court has not been challenged by learned counsel for the appellants, therefore, it is not necessary to refer and discuss the facts of the case in detail. However, brief facts giving rise to this appeal are that the incident relates to 21.7.2001. F.I.R., Exhibit P-4, was registered in this connection. During the course of investigation, the accused-appellants were arrested and, as per their information given to the Investigating Officer under Section 27 of the Evidence Act, the investigating agency recovered the knife, attache etc. The recovery-memo Exhibit P-31 relates to accused Abdul Salam, Exhibit P-85 and Exhibit P-87 relate to accused Mohd. Sanaul, Exhibit P-61 relates to accused Tajmul Sheikh, Exhibit P-62 relates to accused Abdul Sattar, Exhibit P-33 relates to accused Muzzam Sheikh, Exhibit P-17 and Exhibit P-18 relate to accused Mateen Tejamul.

PW-9 Jagtar Singh and PW-38 Khushiram, both, were drivers of the bus and PW-42 Mohanlal was the conductor thereof. PW-9 Jagtar Singh identified one accused Tajmul Sheikh, PW-38 Khushiram identified accused Mohd. Sanaul, Tajmul Sheikh and Abdul Salam. PW-42 Mohanlal initially identified all the accused-persons in the trial court, but, in his cross-examination, he contended that accused Muzzam Sheikh

and Mateen were not present at the time of incident, thereby he denied their presence at the place of occurrence.

Total 42 witnesses were examined in the case and out of them 15 witnesses were examined as eye-witnesses. PW-5 Sanjay Bhargava, PW-6 Ramashankar, PW-7 Bhupesh Datwani, PW-10 Vinod Kumar, PW-11 Pankaj Jain, PW-12 Pankaj Prakash, PW-25 Ramchandra, PW-16 Rahul, PW-17 Smt. Snehlata, PW-18 K.L. Shrivastava and PW-19 Karan Singh, were examined by the prosecution as eye-witnesses, but they did not identify the accused-persons. PW-22 Prakash Jain, PW-32 Lala and PW-33 Rumal, who were witnesses to recovery-memos, were declared hostile by the prosecution.

In view of the statements of PW-9 Jagtar Singh, PW-38 Khushiram and PW-42 Mohanlal, and recovery-memos Exhibit P-31, Exhibit P-85, Exhibit P-87, Exhibit P-61, Exhibit P-62, Exhibit P-33, Exhibit P-17 and Exhibit P-18, I find that the learned counsel for the appellants rightly did not challenge the order of conviction and thus the order of conviction passed by the trial court is liable to be upheld.

I have also examined the finding of the trial court. The trial court, after carefully examining the prosecution evidence, has recorded a finding that there is sufficient evidence on the record to connect the accused-appellants with the crime and consequently

convicted them.

In view of the above discussion and conclusion in the matter, I am of the view that no interference is called for in the impugned order of conviction passed by the trial court.

So far as prayer of the learned counsel for the appellants about reduction of sentence of imprisonment is concerned, it is relevant to mention that although no minimum sentence of imprisonment is provided under Section 395, IPC, but so far as Section 397, IPC, is concerned, the legislature has prescribed minimum sentence of seven years imprisonment. Therefore, the sentence of imprisonment under Section 397, IPC, cannot be awarded less than 7 years and the prayer of the learned counsel for the appellant for reduction of sentence of the accused-appellants to a period of sentence already undergone by them deserves no acceptance. However, looking to all the facts and circumstances of the case, in my opinion, ends of justice will meet in case the accused-appellants are awarded sentence of 7 years RI in each offence under Section 395 as well as under Section 397, IPC, both.

Consequently, the appeal of the appellants is partly allowed; their conviction under Sections 395 and 397, IPC, is maintained, but their sentence of 10 years RI awarded by the trial court in each offence is reduced to a period of 7 years RI with fine of

Rs.1,000/- to each accused-appellants; in default of payment of fine, each of them to further undergo one month's simple imprisonment. Both the sentences of imprisonment will run concurrently.

(Narendra Kumar Jain) J.

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